

AMENDED IN ASSEMBLY MAY 4, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 1353

Introduced by Assembly Member Liu

February 22, 2005

An act to amend ~~Sections 11836, 11837, and 11837.3~~ *Section 11837* of the Health and Safety Code, and to amend Sections 23538 and 23556 of the Vehicle Code, relating to driving under the influence.

LEGISLATIVE COUNSEL'S DIGEST

AB 1353, as amended, Liu. Driving under the influence offenders: education and counseling programs.

If the court grants probation to any person punished for driving under the influence of alcohol or drugs or for driving under the influence of alcohol or drugs and causing bodily injury to another person, and if the county board of supervisors has approved, and the State Department of Alcohol and Drug Programs has licensed, an alcohol and other drug education and counseling program, in addition to other terms and conditions imposed by the court, existing law requires the court to require as a condition of probation that the driver enroll and participate in, and successfully complete, a driving-under-the-influence program.

Existing law requires the court to refer ~~a first offender whose blood alcohol concentration was less than 0.20%, by weight, to participate for at least 3 months or longer in a licensed program that consists of at least 30 hours of program activities, and~~ a first offender whose blood alcohol concentration was 0.20% or more, by weight, or the offender refused to take a chemical test, to participate for at least 6 months or

longer in a licensed program that consists of at least 45 hours of program activities.

This bill would instead require ~~a first offender whose blood alcohol concentration was less than 0.20% to participate for at least 6 months or longer in a licensed program that consists of at least 45 hours of program activities,~~ and a first offender whose blood alcohol concentration was 0.20% or more, by weight, or who refused to take a chemical test, to participate for at least 9 months or longer in a licensed program that consists of at least 60 hours of program activities. The bill would make conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares the
2 following:

3 (a) Driving under the influence (DUI) of alcohol or drugs or
4 both continues to be a significant threat to the public health and
5 safety.

6 (b) Despite significant progress and declining rates of DUI in
7 the last two decades, fatalities associated with this conduct have
8 increased for the past several years.

9 (c) Two hundred thirty-six more people died from DUI
10 conduct in 2001 than in 1998.

11 (d) Nearly 180,000 people were arrested for DUI offenses in
12 2001, of which 45,000, or 25 percent, were repeat offenders.

13 (e) According to the National Highway Transportation Safety
14 Administration, during 2003, 17,013 people died in alcohol
15 related motor vehicle crashes. This equates to 40% of all traffic
16 related deaths.

17 (f) According to the Department of Motor Vehicles, the
18 number of drunken driving deaths in California has increased
19 more than 50 percent in the past five years.

20 SEC. 2. ~~Section 11836 of the Health and Safety Code is~~
21 ~~amended to read:~~

22 ~~11836. (a) The department shall have the sole authority to~~
23 ~~issue, deny, suspend, or revoke the license of a~~
24 ~~driving-under-the-influence program. As used in this chapter,~~
25 ~~“program” means any firm, partnership, association, corporation,~~

1 local governmental entity, agency, or place that has been initially
2 recommended by the county board of supervisors, subject to any
3 limitation imposed pursuant to subdivisions (c) and (d), and that
4 is subsequently licensed by the department to provide alcohol or
5 drug recovery services in that county to any of the following:

6 (1) A person whose license to drive has been administratively
7 suspended or revoked for, or who is convicted of, a violation of
8 Section 23152 or 23153 of the Vehicle Code, and admitted to a
9 program pursuant to Section 13352, 23538, 23542, 23548,
10 23552, 23556, 23562, or 23568 of the Vehicle Code.

11 (2) A person who is convicted of a violation of subdivision
12 (b), (c), (d), or (e) of Section 655 of the Harbors and Navigation
13 Code, or of Section 655.4 of that code, and admitted to the
14 program pursuant to Section 668 of that code.

15 (3) A person who has pled guilty or nolo contendere to a
16 charge of a violation of Section 23103 of the Vehicle Code,
17 under the conditions set forth in subdivision (c) of Section
18 23103.5 of the Vehicle Code, and who has been admitted to the
19 program under subdivision (c) of Section 23103.5 of the Vehicle
20 Code.

21 (4) A person whose license has been suspended, revoked, or
22 delayed due to a violation of Section 23140, and who has been
23 admitted to a program under Article 2 (commencing with Section
24 23502) of Chapter 1 of Division 11.5 of the Vehicle Code.

25 (b) If a firm, partnership, corporation, association, local
26 government entity, agency, or place has, or is applying for, more
27 than one license, the department shall treat each licensed
28 program, or each program seeking licensure, as belonging to a
29 separate firm, partnership, corporation, association, local
30 government entity, agency, or place for the purposes of this
31 chapter.

32 (c) For purposes of providing recommendations to the
33 department pursuant to subdivision (a), a county board of
34 supervisors may limit its recommendations to those programs
35 that provide services for persons convicted of a first
36 driving-under-the-influence offense, or services to those persons
37 convicted of a second or subsequent driving-under-the-influence
38 offense, or both services. If a county board of supervisors fails to
39 provide recommendations, the department shall determine the
40 program or programs to be licensed in that county.

~~(d) After determining a need, a county board of supervisors may also place one or more limitations on the services to be provided by a driving-under-the-influence program or the area the program may operate within the county, when it initially recommends a program to the department pursuant to subdivision (a).~~

~~(1) For purposes of this subdivision, a board of supervisors may restrict a program for those convicted of a first driving-under-the-influence offense to providing only a six-month program, or may restrict a program to those convicted of a second or subsequent driving-under-the-influence offense to providing only an 18-month program, as a condition of its recommendation.~~

~~(2) A board of supervisors may not place any restrictions on a program that would violate any statute or regulation.~~

~~(3) When recommending a program, if a board of supervisors fails to place any limitation on a program pursuant to this subdivision, the department may license that program to provide any driving-under-the-influence program services that are allowed by law within that county.~~

~~(4) This subdivision is intended to apply only to the initial recommendation to the department for licensure of a program by the county. It is not intended to affect any license that has been previously issued by the department or the renewal of any license for a driving-under-the-influence program. In counties where a contract or other written agreement is currently in effect between the county and a licensed driving-under-the-influence program operating in that county, this subdivision is not intended to alter the terms of that relationship or the renewal of that relationship.~~

~~SEC. 3.~~

SEC. 2. Section 11837 of the Health and Safety Code, as amended by Section 1 of Chapter 551 of the Statutes of 2004, is amended to read:

11837. (a) Pursuant to the provisions of law relating to suspension of a person's privilege to operate a motor vehicle upon conviction for driving while under the influence of any alcoholic beverage or drug, or under the combined influence of any alcoholic beverage and any drug, as set forth in paragraph (3) of subdivision (a) of Section 13352 of the Vehicle Code, the Department of Motor Vehicles shall restrict the driving privilege

pursuant to Section 13352.5 of the Vehicle Code, if the person convicted of that offense participates for at least 18 months in a driving-under-the-influence program that is licensed pursuant to this chapter.

(b) In determining whether to refer a person, who is ordered to participate in a program pursuant to Section 668 of the Harbors and Navigation Code, in a licensed alcohol and other drug education and counseling services program pursuant to Section 23538 of the Vehicle Code, or, pursuant to Section 23542, 23548, 23552, 23556, 23562, or 23568 of the Vehicle Code, in a licensed 18-month or 30-month program, the court may consider any relevant information about the person made available pursuant to a presentence investigation, that is permitted but not required under Section 23655 of the Vehicle Code, or other screening procedure. That information shall not be furnished, however, by any person who also provides services in a privately operated, licensed program or who has any direct interest in a privately operated, licensed program. In addition, the court shall obtain from the Department of Motor Vehicles a copy of the person's driving record to determine whether the person is eligible to participate in a licensed 18-month or 30-month program pursuant to this chapter. When preparing a presentence report for the court, the probation department may consider the suitability of placing the defendant in a treatment program that includes the administration of nonscheduled nonaddicting medications to ameliorate an alcohol or controlled substance problem. If the probation department recommends that this type of program is a suitable option for the defendant, the defendant who would like the court to consider this option shall obtain from his or her physician a prescription for the medication, and a finding that the treatment is medically suitable for the defendant, prior to consideration of this alternative by the court.

(c) (1) The court shall, as a condition of probation pursuant to Section 23538 or 23556 of the Vehicle Code, refer a first offender whose concentration of alcohol in his or her blood was less than 0.20 percent, by weight, to participate for at least ~~six~~ *three* months or longer, as ordered by the court, in a licensed program that consists of at least ~~45~~ *30* hours of program activities, including those education, group counseling, and individual interview sessions described in this chapter.

(2) Notwithstanding any other provision of law, in granting probation to a first offender described in this subdivision whose concentration of alcohol in the person's blood was 0.20 percent or more, by weight, or the person refused to take a chemical test, the court shall order the person to participate, for at least nine months or longer, as ordered by the court, in a licensed program that consists of at least 60 hours of program activities, including those education, group counseling, and individual interview sessions described in this chapter.

(d) (1) The State Department of Alcohol and Drug Programs shall specify in regulations the activities required to be provided in the treatment of participants receiving ~~six and~~ nine months of licensed program services under Section 23538 or 23556 of the Vehicle Code.

(2) Any program licensed pursuant to this chapter may provide treatment services to participants receiving at least six months of licensed program services under Section 23538 or 23556 of the Vehicle Code.

(e) The court may, subject to Section 11837.2, and as a condition of probation, refer a person to a licensed program, even though the person's privilege to operate a motor vehicle is restricted, suspended, or revoked. An 18-month program described in Section 23542 or 23562 of the Vehicle Code or a 30-month program described in Section 23548, 23552, or 23568 of the Vehicle Code may include treatment of family members and significant other persons related to the convicted person with the consent of those family members and others as described in this chapter, if there is no increase in the costs of the program to the convicted person.

(f) The clerk of the court shall indicate the duration of the program in which the judge has ordered the person to participate in the abstract of the record of the court that is forwarded to the department.

(g) This section shall become operative on September 20, 2005.

~~SEC. 4. Section 11837.3 of the Health and Safety Code is amended to read:~~

~~11837.3. (a) (1) Each county, through the county alcohol and drug program administrator, shall determine its ability to establish, through public or private resources, a program of~~

1 alcohol and other drug education and counseling services for a
2 person whose license to drive has been administratively
3 suspended or revoked for, or who is convicted of, a first violation
4 of Section 23152 or 23153 of the Vehicle Code, or who is
5 convicted of a violation of subdivision (b), (c), (d), or (e) of
6 Section 655 of, or Section 655.4 of, the Harbors and Navigation
7 Code, pursuant to subdivisions (e) and (f) of Section 668 of the
8 Harbors and Navigation Code. The program shall be
9 self-supporting through fees collected from program participants.
10 The program shall be of at least six months' duration and consist
11 of at least 45 hours of direct education and counseling services.
12 The program shall be authorized by each county and licensed by,
13 and operated under general regulations established by, the
14 department.

15 (2) (A) A county that shows the department that it has
16 insufficient resources, insufficient potential program participants,
17 or other material disadvantages is not required to establish a
18 program.

19 (B) The department may license an alcohol and other drug
20 education program that is less than 30 hours in length in any
21 county where the board of supervisors has provided the showing
22 pursuant to subparagraph (A), and the department has upheld that
23 showing. The shorter program is subject to all other applicable
24 regulations developed by the department pursuant to paragraph
25 (3) of subdivision (b) of Section 11837.4.

26 (b) Each county that has approved an alcohol and other drug
27 education program or programs and that is licensed by the
28 department shall make provision for persons who can document
29 current inability to pay the program fee, in order to enable those
30 persons to participate. The county shall require that the program
31 report the failure of a person referred to the program to enroll in
32 the program to the referring court.

33 (c) In order to assure effectiveness of the alcohol and other
34 drug education and counseling program, the county shall provide,
35 as appropriate, services to ethnic minorities, women, youth, or
36 any other group that has particular needs related to the program.

37 (d) (1) Any person required to successfully complete an
38 alcohol and other drug education and counseling program as a
39 condition of probation shall enroll in the program and, except
40 when enrollment is required in a program that is required to

1 ~~report failures to enroll to the court, shall furnish proof of the~~
2 ~~enrollment to the court within the period of time and in the~~
3 ~~manner specified by the court. The person also shall participate~~
4 ~~in and successfully complete the program, and shall furnish proof~~
5 ~~of successful completion within the period of time and in the~~
6 ~~manner specified by the court.~~

7 ~~(2) An alcohol and other drug education and counseling~~
8 ~~program shall report to the court, within the period of time and in~~
9 ~~the manner specified by the court, the name of any person who~~
10 ~~fails to successfully complete the program.~~

11 ~~SEC. 5.~~

12 *SEC. 3.* Section 23538 of the Vehicle Code, as added by
13 Chapter 551 of the Statutes of 2004, is amended to read:

14 23538. (a) (1) If the court grants probation to person
15 punished under Section 23536, in addition to the provisions of
16 Section 23600 and any other terms and conditions imposed by
17 the court, the court shall impose as a condition of probation that
18 the person pay a fine of at least three hundred ninety dollars
19 (\$390), but not more than one thousand dollars (\$1,000). The
20 court may also impose, as a condition of probation, that the
21 person be confined in a county jail for at least 48 hours, but not
22 more than six months.

23 (2) The person's privilege to operate a motor vehicle shall be
24 suspended by the department under paragraph (1) of subdivision
25 (a) of Section 13352. The court shall require the person to
26 surrender the driver's license to the court in accordance with
27 Section 13550.

28 (3) Whenever, when considering the circumstances taken as a
29 whole, the court determines that the person punished under this
30 section would present a traffic safety or public safety risk if
31 authorized to operate a motor vehicle during the period of
32 suspension imposed under paragraph (1) of subdivision (a) of
33 Section 13352, the court may disallow the issuance of a restricted
34 driver's license required under Section 13352.4.

35 (b) In any county where the board of supervisors has
36 approved, and the State Department of Alcohol and Drug
37 Programs has licensed, a program or programs described in
38 Section 11837.3 of the Health and Safety Code, the court shall
39 also impose as a condition of probation that the driver shall enroll
40 and participate in, and successfully complete a

1 driving-under-the-influence program, licensed pursuant to
2 Section 11836 of the Health and Safety Code, in the driver's
3 county of residence or employment, as designated by the court.
4 For the purposes of this subdivision, enrollment in, participation
5 in, and completion of an approved program shall be subsequent
6 to the date of the current violation. Credit may not be given for
7 any program activities completed prior to the date of the current
8 violation.

9 (1) The court shall refer a first offender whose blood-alcohol
10 concentration was less than 0.20 percent, by weight, to
11 participate for at least ~~six~~ *three* months or longer, as ordered by
12 the court, in a licensed program that consists of at least ~~45~~ *30*
13 hours of program activities, including those education, group
14 counseling, and individual interview sessions described in
15 Chapter 9 (commencing with Section 11836) of Part 2 of
16 Division 10.5 of the Health and Safety Code.

17 (2) The court shall refer a first offender whose blood-alcohol
18 concentration was 0.20 percent or more, by weight, or who
19 refused to take a chemical test, to participate for at least nine
20 months or longer, as ordered by the court, in a licensed program
21 that consists of at least 60 hours of program activities, including
22 those education, group counseling, and individual interview
23 sessions described in Chapter 9 (commencing with Section
24 11836) of Part 2 of Division 10.5 of the Health and Safety Code.

25 (3) The court shall advise the person at the time of sentencing
26 that the driving privilege shall not be restored until proof
27 satisfactory to the department of successful completion of a
28 driving-under-the-influence program of the length required under
29 this code that is licensed pursuant to Section 11836 of the Health
30 and Safety Code has been received in the department's
31 headquarters.

32 (c) (1) The court shall revoke the person's probation pursuant
33 to Section 23602, except for good cause shown, for the failure to
34 enroll in, participate in, or complete a program specified in
35 subdivision (b).

36 (2) The court, in establishing reporting requirements, shall
37 consult with the county alcohol program administrator. The
38 county alcohol program administrator shall coordinate the
39 reporting requirements with the department and with the State
40 Department of Alcohol and Drug Programs. That reporting shall

1 ensure that all persons who, after being ordered to attend and
2 complete a program, may be identified for either (A) failure to
3 enroll in, or failure to successfully complete, the program, or (B)
4 successful completion of the program as ordered.

5 (d) This section shall become operative on September 20,
6 2005.

7 ~~SEC. 6.~~

8 *SEC. 4.* Section 23556 of the Vehicle Code, as amended by
9 Section 21 of Chapter 551 of the Statutes of 2004, is amended to
10 read:

11 23556. (a) (1) If the court grants probation to any person
12 punished under Section 23554, in addition to the provisions of
13 Section 23600 and any other terms and conditions imposed by
14 the court, the court shall impose as a condition of probation that
15 the person be confined in the county jail for at least five days but
16 not more than one year and pay a fine of at least three hundred
17 ninety dollars (\$390) but not more than one thousand dollars
18 (\$1,000).

19 (2) The person's privilege to operate a motor vehicle shall be
20 suspended by the department under paragraph (2) of subdivision
21 (a) of Section 13352. The court shall require the person to
22 surrender the driver's license to the court in accordance with
23 Section 13550.

24 (b) (1) In a county where the county alcohol program
25 administrator has certified, and the board of supervisors has
26 approved, a program or programs, the court shall also impose as
27 a condition of probation that the driver shall participate in, and
28 successfully complete, an alcohol and other drug education and
29 counseling program, established pursuant to Section 11837.3 of
30 the Health and Safety Code, as designated by the court.

31 (2) In any county where the board of supervisors has approved
32 and the State Department of Alcohol and Drug Programs has
33 licensed an alcohol and other drug education and counseling
34 program, the court shall also impose as a condition of probation
35 that the driver enroll in, participate in, and successfully complete,
36 a driving-under-the-influence program licensed pursuant to
37 Section 11836 of the Health and Safety Code, in the driver's
38 county of residence or employment, as designated by the court.
39 For the purposes of this paragraph, enrollment in, participation
40 in, and completion of, an approved program shall be subsequent

1 to the date of the current violation. Credit may not be given to
2 any program activities completed prior to the date of the current
3 violation.

4 (3) The court shall refer a first offender whose blood-alcohol
5 concentration was less than 0.20 percent, by weight, to
6 participate for ~~six~~ *three* months or longer, as ordered by the
7 court, in a licensed program that consists of at least ~~45~~ *30* hours
8 of program activities, including those education, group
9 counseling, and individual interview sessions described in
10 Chapter 9 (commencing with Section 11836) of Part 2 of
11 Division 10.5 of the Health and Safety Code.

12 (4) The court shall refer a first offender whose blood-alcohol
13 concentration was 0.20 percent or more, by weight, or who
14 refused to take a chemical test, to participate for nine months or
15 longer, as ordered by the court, in a licensed program that
16 consists of at least 60 hours of program activities, including those
17 education, group counseling, and individual interview sessions
18 described in Chapter 9 (commencing with Section 11836) of Part
19 2 of Division 10.5 of the Health and Safety Code.

20 (c) (1) The court shall revoke the person's probation pursuant
21 to Section 23602, except for good cause shown, for the failure to
22 enroll in, participate in, or complete a program specified in
23 subdivision (b).

24 (2) The court, in establishing reporting requirements, shall
25 consult with the county alcohol program administrator. The
26 county alcohol program administrator shall coordinate the
27 reporting requirements with the department and with the
28 Department of Alcohol and Drug Programs. That reporting shall
29 ensure that all persons who, after being ordered to attend and
30 complete a program, may be identified for either (A) failure to
31 enroll in, or failure to successfully complete, the program, or (B)
32 successful completion of the program as ordered.

33 (d) The court shall advise the person at the time of sentencing
34 that the driving privilege shall not be restored until the person has
35 provided proof satisfactory to the department of successful
36 completion of a driving-under-the-influence program of the
37 length required under this code that is licensed pursuant to
38 Section 11836 of the Health and Safety Code.

1 (e) This section shall become operative on September 20,
2 2005.

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